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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/736,181	12/15/2000	Jean-Pierre Balech	Q62176	8795

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SUGHRUE, MION, ZINN, MACPEAK & SEAS, PLLC
2100 Pennsylvania Avenue N.W.
Washington, DC 20037-3213

EXAMINER

TRAN, KHANH C

ART UNIT	PAPER NUMBER
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2631

DATE MAILED: 09/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/736,181	Applicant(s) BALECH, JEAN-PIERRE	
	Examiner Khanh Tran	Art Unit 2631	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1-6.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
 13. ☐ Other: _____.


MOHAMMED GHAYOUR
SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: Regarding to Applicant's arguments on page 2, which are quoted "Applicant incorporates herein by reference the still valid "REMARKS" presented in Applicant's Amendment filed on February 17, 2005, and respectfully asks the Examiner carefully to reconsider (and to withdraw) the rejection under 35 U.S.C. 103(a)".

Examiner's position from the Final Rejection still stands and is incorporated herein by reference in response to Applicant's arguments as recited above.

Regarding Applicant's arguments on page 2, which are quoted "While Applicant realizes that the question of what would have been obvious to one of ordinary skill in the art from Billström's disclosure is a very subjective one about which honest persons can disagree, Applicant respectfully submits that Examiner Tran, in spite of his very detailed analysis of passages in Billström's disclosure, has read too much into Billström's disclosure, and has reconstructed Billström's disclosure, with hindsight knowledge of Applicant's own disclosure, to conclude that the subject matter of each of claims 1-6 would have been obvious at the time Applicant's invention was made. Applicant also respectfully submits that the Examiner's revised interpretation of passages of Billström does not answer Applicant's arguments appearing on pages 5-8 of the Amendment filed on February 17, 2005. To reiterate, Applicant again emphasizes that a primary difference between Billström's and Applicant's claimed invention is that, in the invention, it is unnecessary to perform the modulation choice for each terminal by measuring the C/I in predefined conditions as shown in Figures 4A and 4B of Billström. Examiner Tran's argument (with respect to independent claims 1 and 6) is that "determining size and location of at least one domain in said cell. . ." would have been obvious (unpatentable) over Billström's disclosure since measuring the C/I ratio for each terminal will also result in zones in which the "same modulation type" will be used; however, Applicant must respectfully disagree with the Examiner's conclusory statement of obviousness that Applicant's claimed mathematical determination of zones would have been obvious from Billström's disclosure with regard to the zones based on C/I measurements for the different terminals.

Examiner's positions: in column 5, lines 30-40, Billström teaches that figures 4A and 4B shows selected general operations or steps performed by Network planning processor 110. In column 8, lines 35-65, Billström further teaches that the above-described operations and calculations of FIG. 4A and FIG. 4B are performed by Network planning processor 110 and the results thereof passed to control units 70 shown in figure 2 of the various base stations. In column 4, lines 40-65, inputs to Network management system 102, which is connected to a network planning processor (NPP) 110, include the allowed modulation types for each terminal T. Thus, when control unit 70 of a base station 40 allocates a channel to a particular terminal T, control unit 70 knows beforehand which modulation types are allowed due to the interference situation. In column 4, lines 60-67, the inputs to Network planning processor 110 include the locations of the base stations B and the terminals T; the particular antenna patterns employed; basic link parameters such as power densities available; and modulation sensitivities such as C/N and C/I requirements. From the teachings above, one of ordinary skill in the art of the time of the invention would have recognized that the interference situation is directly related to the locations of the base stations B and the terminals, and the coverage range. Based on the results of operations and calculations performed by Network planning processor 110, the control unit 70 of a base station allocates a channel to a particular terminal T, control unit 70 knows beforehand which modulation types are allowed due to interference situation. In light of the foregoing teachings, it would have been obvious for one of ordinary skill in the art at the time of the invention that the method as taught by Billström allows the base station to know beforehand each location of the terminal T experiencing different situation, which each terminal T may require different modulation type, and the base station knows the locations or zones that allows certain modulation types. And because the base station knows beforehand based on the measurement of figures 4A and 4B, the aforementioned step is similar to the claimed step of "determining size and location of at least one domain in the cell ...", contrary to Applicant's arguments that the Examiner's conclusory statement of obviousness. Billström does not explicitly talk about zoning. Nevertheless, Billström teachings encompasses the claimed limitations. Furthermore, the claimed step of "determining size and location of at least one domain ..." certainly requires performing C/I measurements before obtaining domains or zones as claimed in the application claim, contrary to Applicant's arguments that it is unnecessary to perform the modulation choice for each terminal by measuring the C/I in predefined conditions as shown in Figures 4A and 4B of Billström. One of ordinary skill in the art at the time of the invention would appreciate that certain measurements are required to obtain the size and location of the claimed domain.

Applicant further argues that on page 3 that "when mathematically determining a zone as in the present invention, Applicant does not need to know the positions of the terminals, but needs to know only the location of the base stations. The calculation is performed independently of the real terminal number and location. As a result, Applicant's claimed "method" and "system" (claims 1 and 6) avoid the requirement for a large number of C/I measurements to determine the modulation to be used; instead, only the position of a terminal, combined with the obtained zones, is required to determine the modulation to apply".

Examiner's positions: referring to page 4 line 27 via page 5 line 5 of the original disclosure, Applicant clearly states that the size and location of the domains depend on the antenna directivity of the end-users [emphasis added] and on the relative positions of the distant base stations and the base station. In light of Applicant's disclosure, Applicant's arguments contradict with the claimed invention. Furthermore, the original disclosure lacks details in "mathematically determining a zone as argued by Applicant".